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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Chet Michael Wilson, individually and  
as representatives of the class,

Plaintiff,

v.

Mountainside Fitness Acquisition LLC,

Defendant.

Case No. 2:25-cv-01481-MTL

PLAINTIFF'S NOTICE OF  
SUPPLEMENTAL AUTHORITY

1 Plaintiff Chet Michael Wilson submits this notice of supplemental authority to alert  
2 the Court the two recent decisions that bear on the pending motion to dismiss, ECF 13.

3 1. *Wilson v. Better Mortgage Corp.*, 2025 WL 3493815 (S.D.N.Y. Dec. 5, 2025),  
4 addresses one of the issues here: whether a “telephone call” as that term is used in 47  
5 U.S.C. § 227(c)(5) encompasses text messages sent to numbers listed on the National Do  
6 Not Call List. It answers that question yes: It “holds, in accord with a growing consensus  
7 of case law, that § 227(c) of the TCPA applies to text messages.” *Id.* at \*5.

8 *Better Mortgage* summarizes its reasoning as follows: “[T]he ordinary public  
9 meaning of ‘telephone call’ in § 227(c) meant a communication by telephone, which  
10 encompasses text messages. That reading is supported by § 227(c)’s context and purpose;  
11 the uniform construction of neighboring § 227(b); the significant weight of case authority;  
12 and the FCC’s consistent interpretation.” *Id.* at \*9.

13 As to the text, *Better Mortgage* holds, in accord with other authorities Plaintiff has  
14 previously cited, that the “ordinary public meaning” of “telephone call” in 1991  
15 “encompassed any communication made using a telephone” and “was therefore not limited  
16 to oral or vocal communications.” *Id.* at 5. It then considers and rejects contrary arguments  
17 identical to those that Mountainside has made here. *See id.* at \*5–6.

18 As to the statutory context, *Better Mortgage* identifies a broad consensus that text  
19 messages are covered by neighboring section 227(b), which “strongly suggests that  
20 § 227(c)’s parallel usage of ‘telephone calls’ applies to text messages.” *Id.* at \*6–7. It also  
21 concludes that “§ 227(c), if anything, was intended to reach broader telephonic  
22 communications than § 227(b),” because its purpose is “protecting subscribers from  
23 telephone solicitations, not on any one form of such solicitations.” *Id.* at \*7–8.

24 *Better Mortgage* also reviews the relevant FCC orders and finds the agency’s  
25 position “persuasive” because it “accords ... with the statute’s text, purpose, and context,  
26 and is informed by the agency’s subject matter expertise.” *Id.* at \*8.

27 Finally, *Better Mortgage* surveys recent decisions on this issue. *See id.* at \*9. It  
28 concludes that “the significant weight of case authority” supports interpreting “call” to

1 include texts—even when considering only cases that “are not called into question by  
 2 *Loper Bright*.” *Id.* It also notes that Mountainside’s three contrary cases all rest on  
 3 “flawed” reasoning. *Id.*

4 A copy of the order in *Better Mortgage* is attached as **Exhibit A**.

5 2. *Esquivel v. Mona Lee, Inc.*, 2025 WL 3275607 (S.D. Cal. Nov. 24, 2025),  
 6 addresses the impact of *McLaughlin Chiropractic Associates v. McKesson Corp.*, 606  
 7 U.S. 146 (2025), and *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), on the  
 8 issue presented here. 2025 WL 3275607, at \*3. *Esquivel* recognizes that “[a]lthough FCC  
 9 guidance is no longer binding on district courts, its regulations can still inform a district  
 10 court’s analysis.” *Id.* Finding those regulations persuasive, it holds that “the language of  
 11 the TCPA, precedent, and FCC regulatory guidance” all support a conclusion that text  
 12 messages give “rise to a cause of action under Section 227(c)(5).” *Id.*

13 A copy of the order in *Esquivel* is attached as **Exhibit B**.

14 RESPECTFULLY SUBMITTED this 15th day of December, 2025,

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 28 *Proposed Class*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 15, 2025, a true and correct copy of the foregoing notice of supplemental authority was served by CM/ECF to the parties registered to the Court's CM/ECF system.

Dated: December 15, 2025

By: /s/ Michael Skocpol  
Michael Skocpol